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many cases, the written contract was a compromise of disputed claims, with which a court of equity would be slow to interfere.¹⁷ All these decisions merely represent rules which are equally controlling when reformation is sought for mistake of fact.¹⁸

It appears, therefore, that in practice the courts make but a slight distinction between mistakes of law and of fact as grounds for reformation and other equitable relief. It is submitted that there really is no distinction, and that the rule against granting relief for mistake of law, emasculated as it is by many exceptions, should be entirely discarded.¹⁹

RIGHTS OF ACTION FOR INJURY TO THE PROPERTY OF A BANKRUPT. — The present Bankruptcy Act provides that "the trustee of the estate of a bankrupt . . . shall . . . be vested . . . with . . . rights of action arising . . . from . . . injury to his property."¹ A recent case holds that this section vests in the trustee a right of action for fraud inducing the bankrupt to buy property at a price greater than its value. *In re Gay*, 182 Fed. 260 (Dist. Ct., D. Mass.).

An early state decision held that an action for fraud on the bankrupt in the sale of goods was not vested in his assignee as a "debt due to the bankrupt."² The Bankruptcy Act of 1867 contained the same provision as the present act with regard to actions for injury to the bankrupt's property.³ But under it, by the weight of authority, a right of action for fraud causing damage to property was held not to pass to the assignee.⁴ In England, however, the trustee is vested with a right of action for false representations, where the damage has been to the estate of the bankrupt.⁵ The only previous decision under the present federal statute agrees with the English rule and with the principal case.⁶

The course of judicial opinion as to rights of action for the abuse of legal process to the damage of the bankrupt's property affords a parallel to that of the decisions on actions for fraud. Under the early state laws a right of action for malicious attachment,⁷ wrongful execution,⁸ or excessive distress⁹ did not vest in the assignee. Under the Act of 1867 an action for the malicious abuse of garnishment proceedings, to the dam-

¹⁷ See *Pullen v. Ready*, 2 Atk. 587; *Gibbons v. Caunt*, 4 Ves. 839.

¹⁸ See 23 HARV. L. REV. 608-626.

¹⁹ See *Cooper v. Phibbs*, *supra*; *Bonbright v. Bonbright*, 123 Ia. 305; *Biggs v. Bailey*, 49 W. Va. 188; *Wisconsin Marine & Fire Ins. Co. Bank v. Mann*, 100 Wis. 596; *Richmond v. Ogden Street Ry. Co.*, 44 Or. 48; *Wyche v. Greene*, *supra*; *Daniell v. Sinclair*, 6 App. Cas. 181, 190.

¹ BANKRUPTCY ACT, 1898, § 70 a (6).

² *Shoemaker v. Keely*, 2 Dall. (Pa.) 213.

³ BANKRUPTCY ACT, 1867, § 14.

⁴ In the *Matter of Crockett*, 2 Ben. (U. S.) 514; *In re Brick*, 4 Fed. 804; *Tufts v. Matthews*, 10 Fed. 609. *Contra*, *Hyde v. Tufts*, 45 N. Y. Super. Ct. 56. *Cf.* *Byxhie v. Wood*, 24 N. Y. 607.

⁵ *Hodgson v. Sidney*, L. R. 1 Ex. 313; *Warder v. Saunders*, 10 Q. B. D. 114. *Cf.* *Twycross v. Grant*, 4 C. P. D. 40.

⁶ *In re Harper*, 175 Fed. 412.

⁷ *Stanly v. Duhurst*, 2 Root (Conn.) 52.

⁸ *Sommer v. Wilt*, 4 Serg. & R. (Pa.) 10.

⁹ *O'Donnel v. Seybert*, 13 Serg. & R. (Pa.) 54.

age of the bankrupt's business, was held not to pass.¹⁰ The English courts, on the other hand, have held that an action on the case by an undertenant against his lessor for a breach of duty causing a distress by the superior landlord¹¹ and an action for maliciously maintaining the bankruptcy proceedings¹² vest in the trustee. And a well-considered case under the present federal act decides that an action for malicious attachment, where the damage is to the property of the bankrupt, may be maintained only by the trustee.¹³

Not only on the wording of the statute but on general principles of bankruptcy law, the later decisions seem correct. The debtor alone should sue for an injury to his personal rights. But when the direct effect of a tortious act is to diminish the estate to which his creditors are entitled to have recourse, the right of action therefor should pass to his trustee in bankruptcy. Except for the earlier American cases referred to, this principle is fully borne out by statutes and decisions. Thus, a right of action for conversion passes to the trustee.¹⁴ One for trespass to personality passes where the damage is to the property of the bankrupt.¹⁵ But an action which is in form one for the infringement of a property right will not pass, if the real damage is of a personal nature, as an action for loss of services for the seduction of a member of the bankrupt's family,¹⁶ or an action for trespass in his dwelling-house.¹⁷ Where negligence of an attorney causes the bankrupt's imprisonment, the right of action does not pass to the trustee.¹⁸ But it is otherwise where the attorney's negligence or fraud causes damage to the bankrupt's estate.¹⁹ The federal courts have recognized the true distinction in decisions under both the Act of 1867 and the present act that a right of action for a penalty passes to the trustee in bankruptcy if it arises from a transaction from which the bankrupt's estate suffered.²⁰

WHETHER DAMAGE TO CONTRACT RIGHT BY NEGLIGENT ACT OF THIRD PARTY IS ACTIONABLE TORT. — That the existence of a contract between two parties, in addition to giving a right *in personam*, also gives a right *in rem*¹ which the law protects from infringement has been established

¹⁰ Noonan v. Orton, 34 Wis. 259.

¹¹ Hancock v. Caffyn, 8 Bing. 358.

¹² Metropolitan Bank v. Pooley, 10 A. C. 210.

¹³ Hansen Mercantile Co. v. Wyman, Partridge & Co., 105 Minn. 491.

¹⁴ Ouchterlony v. Gibson, 5 M. & G. 579; Lovell v. Hammond Co., 66 Conn. 500.

¹⁵ See North v. Turner, 9 Serg. & R. (Pa.) 244, 249.

¹⁶ Howard v. Crowther, 8 M. & W. 601.

¹⁷ Rogers v. Spence, 13 M. & W. 571. So, also, in England, an action for trespass to personality, where the damage consists solely or principally in personal annoyance. Brewer v. Dew, 11 M. & W. 625; Rose v. Buckett, [1901] 2 K. B. 449. But under our statute it would seem such a right of action must pass to the trustee, under the provision as to rights of action "for the unlawful taking" of the bankrupt's property. BANKRUPTCY ACT, 1898, § 70 a (6).

¹⁸ Wetherell v. Julius, 10 C. B. 267.

¹⁹ Wetherell v. Julius, *supra*; Crauford v. Cinnamon, Ir. R. 1 C. L. 325; *Re Daines*, 16 L. T. Rep. N. S. 127; Morgan v. Steble, L. R. 7 Q. B. 611.

²⁰ Wright v. First National Bank, 8 Biss. (U. S.) 243; First National Bank v. Lasar, 196 U. S. 115.

¹ See PIGGOTT, TORTS, 368.